In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 440/2001
(Old No. 2657/1982)

1- Gainu
2- Bhadu
3- Kunju
4- Sainu
All sons of Gwanu,
5- Bundi S/o Kunju
6- Mahesa S/o Bhadu
7- Suresha S/o Chotia
8- Shibu S/o Chotia
9- Narendra lal S/o Bhadu
10-Bauna alias Banke Lal S/o Kunju
11-Smt. Jugta W/o Kunju
12-Smt. Darshani W/o Gainu
All R/o Village Khumera, Patwari
Circle Guptakashi, Tehsil Ukhimath
District Chamoli …. Appellants.

Versus

State …….Respondent.

Sri Pankaj Purohit, learned counsel for the appellants.
Sri Nandan Arya, learned A.G.A. for the respondent.

Hon'ble B.C. Kandpal, J.

This appeal has been preferred by the appellants against the judgment and order dated 13-9-1982, passed by the Sessions Judge, Chamoli, in S.T. No. 11/1982, State Vs. Gainu and others, convicting the each of them to undergo the sentence for till the rising of the court and to a fine of Rs. 250/- each and in default of payment of fine to undergo R.I. for six months.

2- The brief facts of the prosecution case are that Ram Lal, a resident of Village Khumea, Patwari Circle Guptakashi, Tehsil Ukhimath was in possession of 40 Nalis land of plot No. 354 situate in 'Doam Toke' of Village Khumera. On 9-12-1974 an order for his ejectment from the said land was passed U/S 4/5 of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972

(hereinafter referred as ‘the Act’), but he was never dispossessed at the spot. Thereafter, another case U/S. 4/5 of ‘the Act’ was also instituted and the Prescribed Authority on 26-12- 1981 passed an order for the ejectment and the appeal was also dismissed on 15-2-1982, but he was not dispossessed at the spot. The accused demolished the cowshed of Ram Lal situate in the said land on 26-27-10-1979 about which an F.I.R. was lodged but he Patwari submitted a final report in the matter. Subsequently 10 days prior to the occurrence Ram Lal Singh had collected stones and other material at the spot and had also dug foundation for the construction of the cowshed at its old site. On 5-1-1980 Ram Lal Singh and his sons Rajendra Singh and Mahipal Singh were getting the walls of the cowshed constructed by Shyam Lal and Lungadi masons, at about 10 A.M., all the accused/appellants reached there armed with weapons and told Shyam Lal and Lungadi masons to go away from there as they were also Harijans like them and thererupon both of them left the spot. Thereafter, the accused persons beat Ram Lal Singh, Rajendra Singh and Mahipal Singh and caused injuries to them. They also looted their instrument relating to the construction of cowshed and also looted Rs. 400/- in accused persons in their self-defence and accused Bundi, Mahesha and Gainu also received injuries. The occurrence was witnessed by Dham Singh. Thereupon Ram Lal and his two sons got themselves examined by De. S.P. Kimothi of Phata Dispensary on the same day at 12 noon. Complaint of the incident was filed in the Court of C.J.M. Chamoli, at Gopeshwar on 7-1-1980.

3- On committal of the case, learned Sessions Judge framed charges U/Ss 147, 323/149 I.P.C. and in the alternative U/S 395 I.P.C. The accused persons denied the charges and claimed their trial.

4- The prosecution in support of its case examined P.W. 1, Dr. S.P. Kimothi, P.W. 2, Ram Lal Singh, P.W. 3, Dham Singh, P.W. 4,

Shyam Lal, P.W. 5, Rajendra Singh Bhandar, C.W. 1 Dr. P.C. Pant and C.W.2, Hari Singh Patwari.

5- P.W. 1, Dr. S.P. Kimothi, has examined the injuries of injured Ram Lal Singh, Rajendra Singh and Mahipal Singh on 5.1.1980 at 12 noon at Phata Dispensary. On the person of Ram Lal Singh, following injuries were found:

1- Lacerated wound 2cm x ½ cm on the scalp, 7 cm from left ear.
2- Contusion 2cm x 1 cm on the scalp, 9cm from left ear.
3- Contusion with slight abrasion, 11 cm x 2cm, on the outer iliac surface, just above right iliac- crest.
4- Contusion 5cm x 5cm, just above left knee joint with abrasion on left knee.
5- Contusion 4cm x 1cm in lower left leg.
6- Contusion 4 ½ cm x 3cm in dorsum o right foot.
7- Contusion 6cm x 3cm on right scapula.
8- Contusion 5cm x 2 cm on left scaputal.

On the person of Rajendra Singh, following injuries were detected:-

1- Contusion 5 cm long on left upper arm, 7 cm from elbow joint.
2- Contusion 5cm long on left upper arm, 16cm from Elbow joint.
3- Contusion 2cm long on left upper arm, 16cm from elbow joint.
4- Contusion 6cm x 2cm on back, 2cm from inferior Scapular angle.
5- Contusion 7cm x 2cm on right lower leg, 18 cm from Lateral mellelous.
6- Contusion 5cm long on left leg, 7cm from knee joint.
7- Contusion 3cm x 3cm with central laceration on the Scalp 6cm from occiput.
8- Contusion 2cm x 1 cm on right side of scalp.
9- Contusion 2cm on left side of scalp.

On the person of Mahipal Singh, following injuries were found:-

1- Contusion with haematoma 5cm x4cm on upper border of front, 3cm from left upper eyebrow.

2- Contusion 5cm x 3cm with 1 cm laceration (centrally) on the scalp, 7cm from left ear.

In the opinion of the Medical Officer the injuries were simple, had been caused by some blunt object, like Lathi or Danda and could be caused on 5.1.1980 at about 10 A.M. The Medical Officer proved the injury reports Ext. Ka. 1 to Ka.3 respectively.

6- Dr. P.C. Pant, (C.W. 1) of Guptakashi Dispensary had examined Bundi, mahesha and Gainu accused on 5.1.1980 at 1.30 P.M. and per Memo Ext. C-1 Bundi accused had received the following injury:-

Incised wound 4 ½ “x 1/10” on left palm extending from medical border of ulna at wrist joint, upto the base of the left index finger. Edges were sharp and the ends were pointed. Fresh blood was oozing out from the wound.

Per memo Ext. C-2 Mahesha accused had received the following injury:

Incised wound 5” x 1/2" x ¼” on right front parietal region.

The edges were sharp. Fresh blood was oozing.

Per memo Ex-C-3 Gainu accused had received the following injuries:

1- Lacerated wound 1” x 1” skin deep on the palmer surface of middle finger of left hand. Blood was oozing.

2- Swelling 4” x 4” on the back of right side in sub scapular region.

In the opinion of the witness all the injuries of the accused persons could be caused on 5.1.1980 at 10 A.M. and they were simple and could be caused by some sharp edged weapons like Khukari, Thamali or axe and blunt object as well.

7- Ram La, P.W. 2, is the injured eye witness of the occurrence. He has narrated the facts as mentioned in the written complain and has proved the case.

8- P.W.3, Dham Singh is the independent eyewitness of the occurrence. This witness has deposed that on the day of the occurrence he was collecting wood near the place of the occurrence and had seen the occurrence. He also deposed that the accused person were destroying the Gaushals of Ram Lal Singh. He also deposed that accused Mahesha caught hold of Ram Lal and accused Gainu tried to give Khukari blow on Ram Lal but the blow hit the accused Mahesha. The accused were armed with axe, Khukhari, Thamali etc. He also stated that the accused persons also looted the instruments of construction of Gaushala.

10- P.W.4, Shyam Lal was the mason at the construction work of injured Ram Lal at the time of alleged incident. He has deposed that on the day of the incident the accused persons armed with axe, Thamali, Khukhari etc came at the spot and they threatened him to leave that place and they started pelting stones on him.

11- P.W.5, Rajendra Singh Bhandari has investigated the case on the direction of C.J.M. Gopeshwar and submitted final report in the matter.

12- Hari Singh, C.W.2, has prepared the chick F.I.R. in the cross-case at Patwari Circle Guptakashi and has proved the copy of that report, Ext.C.4.

13- The accused persons inn their statements U/S 313 Cr.P.C. have denied the prosecution allegations and alleged that the complainant party caused damage to their standing crop and on enquiry they did Marpit with them. The accused persons in their defence filed injury reports of Bundi Lal, Mahesha Lal and Gainu and also some papers relating to cross-case.

14- The learned Sessions Judge on perusal of evidence on record and having heard learned counsel for the parties, held the accused persons guilty for an offence U/Ss 147,324/149 I.P.C. and each of them were sentenced to till the rise of the Court and fine of Rs. 250/- each and in default of payment of fine to undergo R.I. for six months.

15- Feeling aggrieved, the accused persons have preferred the appeal before the Allahabad High Court and after creation of new State the same has been transferred to this court.

16- I have heard learned counsel for the appellants, learned A.G.A. and perused the record.

17- In this case the deposition of P.W. 2, Ram Lal, P.W. 3, Dham Singh and P.W. 4, Shyam Lal are important. P.W. 2, Ram Lal is the injured eyewitness of this case and has sustained injuries at the time of the occurrence. He in fact sustained a number of injuries on his person on different parts of his body. The presence of Ram Lal P.W.2, in view of the injuries sustained by him, cannot be doubted at the time of the occurrence. Ram Lal has stated in his deposition that he is in continuous possession of 40 Nalis land in plot No. 354 in 'Doam Toke' of Village Khumera since 1967-68. An order with regard to his ejectment form the said land was passed U/S 4/5 of 'the Act' on 9-12-1974 but he was never dispossessed from that land. Another case U/S 4/5 of 'the Act' in respect of the same land was also instated and on 26-12-1981 order was passed for his ejectment and he preferred the appeal, but it was also dismissed. This witness has further deposed that in any case he could not be dispossessed from his land till now. This witness has further deposed that the accused himself demolished his cowshed situate in the said 40 Nalis land about which the F.I.R. was lodged by him but the Patwari submitted the final report and subsequently after 10 days prior to the occurrence this witness collected stones and other material in order to dug foundation for the construction of the cowshed at its old site. The accused persons could not deny the

ejectment orders passed twice by the court in respect of the said 40 Nalis land. Rather they admitted that about 10 days prior to the occurrence, Ram Lal had collected stones and other material at the land allotted to them and also dug foundation for the construction of cowshed therein. Therefore, there is every reason to believe the testimony of P.W. 2, Ram Lal that prior to the occurrence he had started construction of the cowshed in said land measuring 40 Nalis from which he was being ejected from the court again and again without any follow up action thereafter for the actual ejectment.

18- The case of the defence is that they were infact in possession of the allotted land even prior to the execution of the lease in their favour, but no map has been filled with the lease deed to show as to what particular portion of plot No. 354 has been allotted to the leased land it cannot be determined that the accused person were in possession of the disputed land. Thus it is quite clear that P.W. 2, Ram Lal had collected stones and other material at the spot and had also dug foundation for the construction of cowshed about 10 days prior to the occurrence. The deposition of Ram Lal further shows that later-on on 5.1.1980 since morning he and his sons Rajendra and Mahipal were getting the cow-shed constructed by P.W.2, Shyam Lal. Then at about 10 A.M. accused persons reached over there with weapons and asked Shyam Lal and another mason to go away from there. Both the masons left the spot. Thereafter accused persons beat Ram Lal and his sons Rajendra and Mahipal and caused injuries to them. Ram Lal P.W. 2, has further deposed that accused persons also looted the instruments relating to the construction of the cowshed.

19- Dham Singh, P.W. 3 is an independent eye witness and at the time of the occurrence he was cutting wood at a nearby place. Dham Singh has deposed that the accused persons looted the instruments of the construction of house, but this fact that this witness was cutting the wood at a nearby place, is negative from the

first information report lodged by Rajendra which shows that Dham Singh, P.W.3 was a labrourer of his father Ram Lal. The presence of Dham Singh appears to be doubtful at the place of the occurrence.

20- The testimony of P.W. 4, Shyam Lal shows that he was working as a mason at the place of the occurrence. This witness has deposed that on the day of the incident the accused person armed with weapons came at the spot and threatened him to leave the place. This witness has stated that the accused started pelting stones on him and another labourer, hence he left the place. Thus it is clear that as far as the factum of dacoity is concerned, the same does not find corroboration by the statement of the witness.

21- Now coming on the factum of dacoity, the solitary statement or Ram Lal is there. The factum of dacoity cannot be established on the solitary testimony of P.W. 2 and there is every possibility that this injured witness has simply exaggerated the case with a view to implicate the accused persons in more serious crime than what they had committed. The complainant of this case Rajendra Singh has not been produced by the prosecution. So far as the occurrence of Marpit is concerned, P.W. 4, Shyam Lal who was working as mason at the spot has supported the version of Ram Lal, P.W.2.

22- Learned counsel for the appellants has invited my attention towards the injuries caused to Bundi Lal, Mahesha and Gaunu accused persons and submitted that the accused persons in their self-defence had caused these injuries to the complainant side. But I do not find any force in this argument, as there is no explanation absolutely from the side of the accused persons that how the injuries on the persons of Ram Lal P.W. 2 and his sons, referred by the prosecution, were caused. On the other side P.W. 2, Ram Lal has admitted in his deposition that the complainant side in their self-defence committed Marpit with the accused person s which resulted the injuries on their person.

23- In view of the above discussion as well as the facts and circumstances of the case, I am of the view that the production had succeeded in establishing the guilt of the accused/appellant U/Ss 147, and 323/149 I.P.C. beyond reasonable doubt. The impugned judgment and order passed by the trial court does not require any interference.

24- The appeal lacks merit and is liable to be dismissed.

25- Accordingly the appeal is dismissed. The conviction and sentence awarded y the trail court, is hereby confirmed.

26- Let the record of the court below be returned back so that the proceedings to realize the fine imposed against the accused/appellants by the trial court, may be initiated against them.

(B.C. Kandpal, J.)

Dated: July 19, 2006

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